

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #7	CCRB Case #: 201907639	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/26/2019 10:48 AM, Tuesday, 08/27/2019 2:45 PM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 2/26/2021	EO SOL 10/13/2021	
Date/Time CV Reported Tue, 08/27/2019 2:38 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/27/2019 2:38 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. DTS Fred Washington	4264	936926	042 PCT
3. POF Stephanie Alba	19604	958228	042 PCT
4. LT Yoel Hidalgo	00000	944080	042 PCT
5. POM Fitz Edouard	04802	956616	042 PCT
6. POM Wilson Rodriguez	18658	959147	042 PCT
7. POM Mark Mobarek	05668	956938	042 PCT
8. SGT Alexander Velasquez	4729	942659	042 PCT
9. POM Joel Bolivar	17860	946793	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Velger	10295	951385	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Fred Washington	Abuse: On August 26, 2019, Detective Fred Washington threatened § 87(2)(b) with the use of force.	[REDACTED]
B.LT Yoel Hidalgo	Abuse: On August 26, 2019, Lieutenant Yoel Hidalgo entered § 87(2)(b)	[REDACTED]
C.POF Stephanie Alba	Abuse: On August 26, 2019, Police Officer Stephanie Alba entered § 87(2)(b)	[REDACTED]
D.LT Yoel Hidalgo	Abuse: On August 26, 2019, Lieutenant Yoel Hidalgo threatened to arrest § 87(2)(b)	[REDACTED]
E.POM Joel Bolivar	Discourtesy: On August 27, 2019, Police Officer Joel Bolivar spoke discourteously to § 87(2)(b)	[REDACTED]
F.POM Fitz Edouard	Abuse: On August 27, 2019, Police Officer Fitz Edouard entered § 87(2)(b)	[REDACTED]
G.POM Mark Mobarek	Abuse: On August 27, 2019, Police Officer Mark Mobarek entered § 87(2)(b)	[REDACTED]
H.POM Joel Bolivar	Abuse: On August 27, 2019, Police Officer Joel Bolivar entered § 87(2)(b)	[REDACTED]
I.POM Fitz Edouard	Abuse: On August 27, 2019, Police Officer Fitz Edouard searched § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
J.POM Mark Mobarek	Abuse: On August 27, 2019, Police Officer Mark Mobarek searched § 87(2)(b)	
K.POM Joel Bolivar	Abuse: On August 27, 2019, Police Officer Joel Bolivar searched § 87(2)(b)	
L.POM Wilson Rodriguez	Abuse: On August 27, 2019, Police Officer Wilson Rodriguez entered § 87(2)(b)	
M. Officers	Abuse: On August 27, 2019, officers damaged § 87(2)(b)s property.	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	

Case Summary

On August 27, 2019, § 87(2)(b) filed the following complaint with the CCRB Intake Unit. BWC was obtained for this case (Board Review 01 and 02)

On August 26, 2019 at approximately 10:48 a.m., Lt. Yoel Hidalgo, PO Stephanie Alba, Det. Fred Washington, and PO Matthew Velger of the 42nd Precinct went to § 87(2)(b) in the Bronx with a Buildings Department representative to inspect a building that had fire damage earlier in the year. While telling this to § 87(2)(b) Det. Washington allegedly shook his mace as if he were about to use it (**Allegation A: Abuse of Authority, § 87(2)(g)**). During this inspection, Lt. Hidalgo and PO Alba entered various units throughout the building (**Allegations B and C: Abuse of Authority, § 87(2)(g)**). After determining that the building was unsafe for people to live, Lt. Hidalgo informed § 87(2)(b) that he and anyone else inside could be arrested if they continued to live there (**Allegation D: Abuse of Authority, § 87(2)(g)**).

On August 27, 2019 at approximately 2:45 p.m., Sgt. Alexander Velasquez, PO Joel Bolivar, PO Fitz Edouard, PO Wilson Rodriguez, and PO Mark Mobarek went to the location above because PO Bolivar, PO Edouard, and PO Mobarek saw someone enter § 87(2)(b) after the Buildings Department issued a vacate order. § 87(2)(b) saw the officers outside the building and told him that he owned the building, to which PO Bolivar allegedly said, “This is your sister’s building. Get the fuck out of here” (**Allegation E: Discourtesy, § 87(2)(g)**). PO Edouard, PO Bolivar, and PO Mobarek entered the building (**Allegations F, G, and H: Abuse of Authority, § 87(2)(g)**) and searched different parts of the building (**Allegations I, J, and K: Abuse of Authority, § 87(2)(g)**). PO Rodriguez entered the building through a different entrance (**Allegation L: Abuse of Authority, § 87(2)(g)**). While they were searching, § 87(2)(b) said he could hear things breaking inside (**Allegation M: Abuse of Authority, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation (A): Abuse of Authority: On August 26, 2019, Detective Fred Washington threatened § 87(2)(b) with the use of force.

Allegation (B) Abuse of Authority: On August 26, 2019, Lieutenant Yoel Hidalgo entered § 87(2)(b)

Allegation (C): Abuse of Authority: On August 26, 2019, Police Officer Stephanie Alba entered § 87(2)(b)

Allegation (D): Abuse of Authority: On August 26, 2019, Lieutenant Yoel Hidalgo threatened to arrest § 87(2)(b)

By the time of the incident, § 87(2)(b) had vacate orders from both the Department of Buildings and by the Department of Housing Preservation and Development (HPD) due to a fire that had occurred in May of 2019. The DOB vacate order, issued on May 12, 2019 pursuant to section 28-201.1 of the NYC administrative code, states, “fire and fire fighting operations have caused fire, water and smoke damage throughout the premises...These potentially hazardous conditions have therefore rendered the ENTIRE BUILDING unsafe to occupy” (Board Review 03). The HPD vacate order, effective June 3, 2019, cited broken windows and damage to walls and ceilings in all three units of the building due to a fire, as well as lack of electricity and gas (Board Review 04).

On August 26, 2019 at approximately 10:48 a.m., Lt. Hidalgo, PO Alba, Det. Washington, and PO Velger went to § 87(2)(b) with a representative from the DOB. Upon arriving, Lt. Hidalgo and the DOB representative spoke with § 87(2)(b) about their need for DOB to inspect

§ 87(2)(g)

Allegation (E) Discourtesy: On August 27, 2019, Police Officer Joel Bolivar spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: On August 27, 2019, Police Officer Fitz Edouard entered § 87(2)(b)

Allegation (G) Abuse of Authority: On August 27, 2019, Police Officer Mark Mobarek entered § 87(2)(b)

Allegation (H) Abuse of Authority: On August 27, 2019, Police Officer Joel Bolivar entered § 87(2)(b)

Allegation (I) Abuse of Authority: On August 27, 2019, Police Officer Fitz Edouard searched § 87(2)(b)

Allegation (J) Abuse of Authority: On August 27, 2019, Police Officer Mark Mobarek searched § 87(2)(b)

Allegation (K) Abuse of Authority: On August 27, 2019, Police Officer Joel Bolivar searched § 87(2)(b)

Allegation (L) Abuse of Authority: On August 27, 2019, Police Officer Wilson Rodriguez entered § 87(2)(b)

On August 27, 2019, PO Joel Bolivar, PO Fitz Edouard, and PO Mark Mobarek were driving near the location after Lt. Hidalgo told them that no one was allowed into the building due to the vacate order that was issued due to the fire. PO Edouard said in his statement that he saw a black male exit the building and reenter (Board Review 11). PO Mobarek also saw the male exit and reenter when the RMP was approximately a quarter of a block to a block away (Board Review 12). PO Bolivar did not independently remember seeing a male exit or enter the building during his interview (Board Review 13). However, both PO Bolivar, in addition to PO Mobarek, noted this in his memo book on the day of the incident (Board Review 14). § 87(2)(b) also testified that during this incident, an officer told him that they had observed someone at the building closing the door.

PO Edouard called PO Rodriguez, who was driving with Sgt. Velasquez and requested that they respond to the scene, which they did. Sgt. Velasquez, at the time of his statement, did not have any detailed memory of this incident and only remembered that they were there to see if anyone was in the building (Board Review 15). PO Rodriguez said in his statement that he remembered PO Edouard telling them that they had seen someone enter (Board Review 16).

In his statement, § 87(2)(b) said he approached these officers and told them that he owned the building, to which a stocky Hispanic officer with a dark complexion and short facial hair who stood at approximately 5'7" replied "Shut up. This isn't your building. It's your sister's building. Get the fuck out of here." PO Joel Bolivar is a Hispanic officer with a dark complexion, who has short facial hair, stands at 5'7", and weighs approximately 185 pounds. In his statement, PO Joel Bolivar did not remember himself or anyone else making such comments but was aware that a woman owned the building and not a man. None of the other officers remembered these statements being made by any officers on scene. BWC does not capture any conversations with civilians and all officers claimed to have not had any conversations with any civilians on scene or to have not remembered any of these conversations.

PO Edouard, PO Bolivar, and PO Mobarek entered the building through the sidewalk entrance while PO Rodriguez and Sgt. Velasquez stayed outside. PO Rodriguez entered the building

through the basement entrance after the original three officers left the main entrance not having found anyone. In their interviews, the officers all noted that the building was not habitable for residency. PO Mobarek described one particular danger being that there was an area on an above-ground floor where a person could fall through the floor and drop multiple stories.

BWC captures the three officers searching various parts of the building. PO Edouard searched under a bed; PO Mobarek searched a bathroom, a bedroom, and the fire escape; and PO Bolivar searched under a bed, the fire escape, a shed in the rear exterior section of the property, and a bedroom. PO Bolivar also opens two roughly six-foot refrigerators that do not appear to be running, are unplugged, and are not near anything resembling a kitchen. One of these refrigerators was sideways on the floor with the door facing up. Unable to find anyone, the officers resumed their regular patrol and took no further action.

Mendez v. Dinkins, 226 A.D.2d 219 states, “The government has a paramount interest in protecting the public from imminent danger. Summary administrative action, even which results in deprivation of a significant property interest without a prior hearing, is justified when it responds to a situation in which swift governmental action is necessary to protect the public health and safety.”

People v. Stanislaus-Blache 93 A.D.3d 740 held that entry is permissible if it does not “exceed the scope and duration of the emergency situation and [is] not primarily intended as a search for evidence” (Board Review 17).

§ 87(2)(g)

PO Mobarek and PO Bolivar noted in their memo books that they had seen someone enter the building, and the officers were aware of the vacate order issued for § 87(2)(b) and as such were aware of the dangerous conditions associated with the building due to being told by their superiors the previous day. BWC confirms the unlivable conditions of the building and that the officers were not searching for evidence of a crime. § 87(2)(g)

Allegation (M) Abuse of Authority: On August 27, 2019, officers damaged § 87(2)(b)'s property.

In his statement, § 87(2)(b) said that he could hear the officers breaking things as he stood outside the building. He described the sounds of things being thrown as well as glass, metal, and wood banging. BWC depicts the officers causing damage to the building only insofar as they were trying to gain access to different parts of the building by prying doors open, breaking locks, and breaking wooden seals in order to search for the individual who they saw.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint as a witness (Board Review 19)
- Det. Washington has been a member of service for 15 years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)
- Lt. Hidalgo has been a member of service for 13 years and has been a subject in three other CCRB complaints and three other allegations, none of which were substantiated. § 87(2)(g)
- PO Stephanie Alba has been a member of service for four years and this is the first CCRB complaint to which she has been a subject.
- PO Joel Bolivar has been a member of service for 11 years and has been a subject in five other CCRB complaints and seven other allegations, of which one was substantiated:
 - 201900266 involved a substantiated allegation of discourtesy (word) against PO Bolivar for telling a civilian to “shut the fuck up and go somewhere else.” The Board recommended Formalized Training and the NYPD has not yet imposed discipline.
- PO Fitz Edouard has been a member of service for five years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)
- PO Mark Mobarek has been a member of service for five years and has been a subject in three other CCRB complaints and six allegations, of which two were substantiated.
 - 201803792 involved substantiated allegations of stop and frisk against PO Mobarek. The Board recommended Command Discipline A and the NYPD imposed Formalized Training. § 87(2)(g)
- PO Wilson Rodriguez has been a member of service for four years and a subject in one other CCRB complaint and four other allegations, none of which were substantiated.
- Sgt. Alexander Velasquez has been a member of service for 13 years and has been a subject in three other CCRB complaints and 8 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.

- § 87(2)(b), § 87(2)(c)

Squad No.: 7

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature _____ Print Title & Name _____ Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____